



MEMORANDUM



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Subject:

D.C. Whistleblower Protection Act.

The Office of the Attorney General for the District of Columbia has provided the attached document for each member of the Fire and EMS Department to review.

Platoon commanders must make the information part of a company drill and make appropriate journal entries.

Dennis L. Rubin
Fire/EMS Chief

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Attorney General



ATTORNEY GENERAL

CONFIDENTIAL BASED ON ATTORNEY-CLIENT PRIVILEGE

TO: All District Government
Subordinate Agency Heads

ORIGINATOR: Peter J. Nickles
Interim Attorney General

DATE: April 21, 2008

SUBJECT: Guidance for the Protection of District of Columbia Employees Under
the D.C. Whistleblower Protection Act

I. INTRODUCTION

The District of Columbia Whistleblower Protection Act ("DWPA"), D.C. Official Code § 1-615.51 *et seq.*, allows District government employees to report waste, fraud, abuse of authority, violations of law, or threats to public health or safety without fear of retaliation or reprisal. This memorandum provides guidance concerning the responsibilities of supervisors and agency heads in handling employee disclosures of governmental misconduct, and in ensuring that those who make such disclosures do not suffer discipline absent an independent reason.

II. DISCLOSURES OF GOVERNMENTAL MISCONDUCT

The DWPA protects current and former District employees, as well as applicants for employment. Such "employees" may disclose misconduct to a variety of federal and local agencies, or to any supervisor of the District government.

A. *Receiving the disclosure.* When a supervisor learns, either directly or indirectly, that an employee has made a disclosure alleging serious misconduct, including any violation of law, the supervisor should prepare a file for the matter and relay the information to the agency head. A supervisor who learns of a disclosure alleging his or her own misconduct should immediately forward the file to the next level supervisor for further action.

B. *Evaluating the disclosure.* Within three (3) business days of the disclosure, the agency head should decide whether to investigate the allegation of misconduct. The agency head may, in his or her discretion, decide not to investigate allegations of trivial matters or those that are merely disagreements over policy decisions.

The agency head should investigate any alleged misconduct that reasonably could be considered: (1) gross mismanagement; (2) gross misuse or waste of public resources or funds; (3) abuse of authority in connection with the administration of a public program or the execution of a public contract; (4) a violation of a federal, state, or local law, or regulation, or of a term of a contract between the District government and a District government contractor which is not of a merely technical or minimal nature; or (5) a substantial and specific danger to the public health and safety. The agency head also must immediately report any such allegation to the D.C. Office of the Inspector General.

All investigations should be completed within 10 business days from the initial receipt of the disclosure. If the investigation is not completed within 10 business days, the investigation may continue for up to another 10 business days with the approval of the next-level supervisor. Any additional extensions should only be approved by the agency head, or, if the agency head is the whistleblower or the subject of the whistleblower complaint, by the City Administrator (or the City Administrator's designee).

If an employee asks a supervisor whether his or her disclosure warrants protection under the DWPA, the supervisor shall advise the employee that only an adjudicatory body can make such a determination.

C. *Protecting the employee.* All investigations must be strictly confidential, and the supervisor should take all feasible measures to protect the identity of the employee who made the disclosure.

The employee shall continue to perform his or her assigned tasks with no change to his or her employment status. However, if it becomes clear that the employee is facing a hostile work environment or is otherwise at risk as a result of his or her disclosure, and the best interests of the employee, the public safety, the District, or the agency warrant the employee's transfer to an equivalent position or temporary placement on paid administrative leave, such action may be taken with the employee's written consent.

III. RULE AGAINST DISCIPLINE BECAUSE OF DISCLOSURES OF MISCONDUCT

An employee who has disclosed misconduct cannot be disciplined for doing so if he or she reasonably believes that the disclosure is truthful. However, an employee who has disclosed misconduct is subject to the same disciplinary measures as any other employee so long as there is an independent basis for the discipline and the decision to discipline the employee is not motivated by the employee's disclosure.

If the employee's disclosure contributes in any way to a supervisor's decision to impose discipline, the discipline generally is prohibited. If an adjudicative body finds that the employee's protected disclosure was a contributing factor to disciplinary action against that employee, the involved supervisor will be disciplined by the agency and/or the court. The supervisor also will be subject to a court-imposed fine of up to \$1,000.

Before a supervisor proceeds with disciplinary action against an employee who has disclosed governmental misconduct, the supervisor should discuss the matter with the agency head and General Counsel.

IV. ADDITIONAL INFORMATION

You may obtain additional information regarding your responsibilities and rights, as a supervisor, under the DWPA by contacting the Attorney General for the District of Columbia.

PJN/wcw/hmj/phg

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